IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.1089 OF 1997

M/s.Coats of India Ltd. ...Petitioners

Versus

Excel Flexibles Containers Pvt.Ltd. ...Respondents

.....

Ms.Shakuntala Joshi for Petitioners.

None for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

JULY 7, 2005.

P.C.

1. Heard Counsel for the Petitioners. None appears for the Respondents, though served. This Petition is under Section 433 and 434 of the Companies Act, 1956, praying for winding up of Excel Flexibles Containers Pvt.Ltd., a Company registered and incorporated under the provisions of the Companies Act, 1956.

2. According to the Petitioners, Petitioners sold and delivered metal coatings for the

manufacturing activity of the Respondent Company from time to time. The documents on record establish the position that such supplies were made and accepted. There is nothing on record to even remotely suggest that the quality of metal coatings provided by the Petitioners was substandard or there was short supply. No such grievance has been raised by the Respondent Company.

3. As Respondent Company failed to make payment, which was outstanding to the extent of Rs.1,88,610/- (Rupees One Lakh Eighty-eight Thousand Six Hundred Ten), the Petitioner gave statutory notice on 6th October 1997. No reply was received in response to the statutory notice. Eventually, the Petitioner Company was advised to file present Petition.

8. Inspite of service of the present Petition, no reply has been filed controverting the assertions made in the present Petition. From the materials placed on record at the instance of the Ppetitioners, it is evident that the goods have been sold and delivered by the Petitioners and

accepted by the Respondents. As no response is filed to this Petition, the legal presumption against he Respondent Company that it is unable to pay the debt, has remained unrebutted. If it is so, this Court has no option but to allow this Petition.

9. It is seen from the record that the Respondent was shown indulgence and time was granted to file reply on payment of cost. Even that indulgence has not been availed by the Respondents.

10. In the circumstances, Petition made absolute in terms of prayer clauses (a) and (b).

11. Official Liquidator to forthwith take over possession of assets and properties of the Respondent Company and proceed in accordance with law.

A.M.KHANWILKAR, J.